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May 24, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 95-184; MM Docket No. 92-260

Dear Ms. Dortch:

On May 24, 2007, Daniel L. Brenner and I met with Rudy Brioché, Legal Advisor to Commissioner Adelstein, to discuss matters raised in the Further Notice of Proposed Rulemaking in the above-captioned proceedings. Specifically, we argued, for the reasons described below, that the Commission should *not* amend its rules to indicate that wiring located behind sheet rock in multiple dwelling unit buildings ("MDUs") is "physically inaccessible" for purposes of the Commission's cable home wiring rules.

As fully discussed in NCTA's comments and reply comments, the Commission has two sets of rules governing the disposition of cable-owned wiring in MDUs when an individual resident or a building owner terminates service. Wiring *inside* a residential unit is governed by the "cable home wiring" rules. Those rules were promulgated pursuant to an express statutory directive in Section 624(i) of the Communications Act. They require cable operators to offer to sell such wiring to a terminating customer at "replacement cost" before removing the wiring. And if the customer declines the offer, the operator must remove the wiring within seven days or make no subsequent attempt to remove it or to restrict its use.

Wiring that is dedicated to a particular residential unit but is located *outside* the unit is governed by the "home run wiring" rules. Congress made no specific provision for such rules and, in fact, made clear that Section 624(i) applied only to MDU wiring "within the interior premises of a subscriber's dwelling unit."[1] The home run wiring rules do not require cable operators to offer to sell their wiring at replacement cost (or to sell it at all) upon termination. Instead, they simply require cable operators who do not have a contractual right (or a statutory right, under state right-of-access laws) to remain in the building after termination to choose one of three options: (1) remove their home run wiring; (2) abandon the wiring; or (3) offer to sell the wiring at a *negotiated* price.

[1] Report of the Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 118 (1992).

The demarcation point between cable home wiring and home run wiring is defined as a point approximately 12 inches outside of where the wiring enters the residential unit, unless that point is "physically inaccessible," in which case it is the closest practicable point that does not require access to the residential unit. A location is "physically inaccessible" under the rules only if accessing wiring at such a point would both "require significant modification of, or significant damage to, preexisting structural elements, *and* would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring." In a note to this definition, the rules indicate that wiring embedded in brick, metal conduit, and cinder blocks would likely be physically inaccessible, while wiring enclosed in hallway molding would not.

The practical effect of determining that wiring behind sheet rock is "physically inaccessible" would be to move the demarcation point a manner that transforms all "home run wiring" located behind sheet rock into "cable home wiring" – which significantly alters the property rights of cable operators with respect to such wiring. There may be policy arguments for and against subjecting all dedicated wiring inside and outside the individual residential units as "cable home wiring," but both Congress and the Commission chose not to do so. Indeed, the Commission specifically rejected proposals to change its definition of the demarcation point to achieve this result,[2] and revisiting that determination is not within the scope of this proceeding.

All that is properly at issue is whether wiring located behind sheet rock meets the two-part definition of, and should be deemed generally to be, "physically inaccessible." And the overwhelming preponderance of the evidence in the record, consisting of declarations submitted by individuals with experience and expertise in the installation of cable wiring, demonstrates that accessing wiring behind sheet rock has no significant effect on and does not damage preexisting structural elements and does not add significant costs or difficulty. The declarations make clear (and in some cases expressly state) that, in these respects, wiring behind sheet rock is like wiring behind molding – and is nothing like wiring embedded in brick, metal conduit or cinder blocks.

In these circumstances, there is no basis under the existing statute and rules for ruling that, as a general matter, wiring behind sheet rock is physically inaccessible. And there is, therefore, no basis for altering the rights of cable operators, MDU building owners, residents and competing MVPDs in a manner inconsistent with the statutory framework and rules adopted by Congress and the Commission with respect to the disposition of wiring inside and outside individual residential units.

Respectfully submitted,

/s/ Michael S. Schooler

Michael S. Schooler

cc: R. Brioché

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[2] *See Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 3659, 3729 (1997).